

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI
Criminal Miscellaneous Application No. 242 of 2024
(Talha Yousuf Versus Syed Muhammad Ahsan and others)

| DATE | ORDER WITH SIGNATURE OF JUDGES |
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1. For orders on MA No. 3318/2024
2. For hearing of case.

25.11.2025

Mr. Naveed Ahmed Advocate for the Applicant
Mr. Amjad Ali Shabranji Advocate for the Respondent No.1 and 2
Mr. Muhammad Mohsin Mangi, Assistant Prosecutor General

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Ali Haider 'Ada', J.:- Through the present Criminal Miscellaneous Application, the Applicant has called in question the order dated 10.02.2024 passed by the learned Judicial Magistrate XXV Karachi South, whereby in summary proceedings the learned Magistrate approved the police report submitted under 'C' Class. The Applicant, being the Complainant of the FIR, is aggrieved by such findings and seeks interference by this Court.

2. The facts, in brief, are that FIR No. 823 of 2023 was registered at Police Station Preedy on 13.12.2023, though the incident is alleged to have occurred on 21.08.2023. The FIR was lodged under Section 395 PPC wherein the Complainant/Applicant stated that he is running a shop of mobile accessories in the mobile market situated at Abdullah Haroon Road, Karachi. It is further alleged that on the date of incident at about 2000 hours, Respondents No.1 and 2 along with other unknown persons, all armed with deadly weapons, forcibly entered the premises of the Applicant and removed 99 cartons containing mobile accessories, and after extending threats, fled away. According to the Complainant, due to the threats extended, he initially remained silent but later reported the matter to police. During the course of investigation, the Applicant approached the high-ranking police officials expressing dissatisfaction with the manner in which the investigation was being conducted. On such complaints, the Investigating Officer was placed under suspension vide order dated 23.01.2024 and departmental

proceedings were also initiated against him. However, despite his suspension, the same I.O. proceeded to submit a report recommending disposal of the case under 'C' Class. The learned Magistrate, upon receipt of the report, concurred with the findings of the I.O. and approved the same through the impugned order.

3. Learned counsel for the Applicant submits that the investigation was conducted in a highly casual and mechanical manner. It is contended that in the concluding part of the report the I.O. relied upon a version allegedly furnished by the accused party wherein it was claimed that the articles were taken away due to non-payment of outstanding dues by the brother of the Complainant. Learned counsel submits that this so-called defence was never properly recorded nor supported by any documentary evidence, whereas even if the accused claimed a monetary dispute, they had no lawful authority to enter the premises of the Complainant and forcibly take away the stock. It is further urged that the Complainant, in order to assist the investigation, collected CCTV camera footage and provided the same to the I.O. in terms of Article 164 of the Qanun-e-Shahadat Order, 1984, but the I.O. failed to bring such material on record, thereby rendering the investigation deficient and one-sided. Counsel submits that the learned Magistrate failed to examine this crucial material and proceeded primarily on the ground that there was delay in the lodging of the FIR and that the dispute appeared to be civil in nature. It is argued that both these grounds are wholly irrelevant where the allegation pertains to armed trespass and forcible removal of property. Thus, the impugned order reflects non-application of judicial mind and warrants interference, with a direction to the Magistrate to send the matter for trial.

4. Conversely, learned counsel for Respondent No.1 and 2 contends that the entire matter stood resolved through mediation conducted by the market association and that the allegations of use of deadly weapons and issuance of threats are false and exaggerated. According to him, both parties are shopkeepers of the same market and the matter pertains to a business transaction which had been amicably settled. He argues

that even if the trial is directed to be held, then the prosecution would not be able to prove its case and the exercise would be futile.

5. Learned APG supports the impugned order, submitting that the dispute appears essentially civil in nature. It is argued that the learned Magistrate rightly declined to proceed further and approved the 'C' Class report.

6. Heard and perused the material available on record. After anxious and careful judicial scrutiny, applying established principles of criminal jurisprudence and the beneficial maxims of legal wisdom, the entire matter has been scanned and re-examined in the light of the record, the submissions advanced by the parties and the legal position governing summary disposal of criminal cases.

7. Before proceeding to examine the matter on its merits, it is appropriate to note the statutory framework governing the concept of investigation under the Criminal Procedure Code. Section 4(1)(l) Cr.P.C. defines "investigation," and an elucidation of the scope and import of this definition is essential, as it defines the outlines of the investigating agency's mandate and the procedural obligations cast upon the Investigating Officer during the investigation into a cognizable offence. For ready reference, the said provision is reproduced herein.

Section 4(1) (l) "Investigation": -includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.

8. Having examined the statutory definition of investigation under Section 4(1)(l) of the Criminal Procedure Code, it is equally pertinent to assert to the legal provisions that govern the powers, scope, and domain of authority vested in an Investigating Officer. The Criminal Procedure Code, through its relevant sections, delineates the extent to which an officer may investigate into a cognizable offence, while the Police Rules, 1934 further elaborate the procedural framework and duties associated with such investigation. For a proper appreciation of the statutory scheme, it is necessary to reproduce the material

provisions that regulate the commencement and conduct of investigation. In this context, **Section 156 Cr.P.C.**, read together with **Rules 25.1 and 25.2 of the Police Rules, 1934 (Volume III)**, defines the operative field within which the Investigating Officer is required to function. For ready reference, the said provisions are reproduced as under:

Section 156. Investigation into cognizable cases: (1) Any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would, have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

(2) No proceeding of a police-office in any such case shall at any stage be called in question on the ground that the case was one, which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned.

[(4) Notwithstanding anything contained in sub-sections (2) or (3) no police-officer shall investigate an offence under Section 497 or Section 498 of the Pakistan Penal Code, except upon a complaint made by the husband of the woman, or, in his absence by some person who had the care of such woman on his behalf at the time when such offence was committed.]

25.1-Power to investigate. – (1) *An officer in charge of a police station is empowered by section 156, Criminal Procedure Code, to investigate any cognizable offence which occurs within the limits of his jurisdiction.*

(2) He is also empowered under section 157(1), Criminal Procedure Code, to depute a subordinate to proceed to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offenders. Any police officer may be so deputed under this section, but where a police officer under the rank of assistant sub-inspector is deputed the investigation shall invariably be taken up and completed by the officer in charge of the police station or an assistance sub-inspector at the first opportunity.

3) An officer in charge of a station shall also render assistance whenever required to all officers of the Criminal Investigation Department working within his jurisdiction.

25.2 Power of investigating officers.-- (1) The powers and privileges of a police officer making an investigation are details in sections 160 to 175, Criminal Procedure Code.

An officer so making an investigation shall invariably issue an order in writing in Form 25.2(1) to any person summoned to attend such investigation and shall endorse on the copy of the order retained by the person so summoned the date and time of his arrival at, and the date and time of his departure from the place to which he is summoned. The duplicate of the order shall be attached to the case diary.

(2) No avoidable trouble shall be given to any person from whom enquiries are made and no person shall be unnecessarily detained.

(3) It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person.

9. Turning to the obligations resting upon the Investigating Officer, it must be underscored that the Investigating Officer has pivotal position within the criminal justice system. The integrity, quality, and completeness of the investigation bear directly upon the fairness of the trial and the ultimate dispensation of justice. An investigation report, therefore, is not a mere procedural formality but a substantive document that carries considerable evidentiary and legal weight, often determining the course of the criminal proceedings. Any infirmity, bias, or deviation from the mandated procedure can end the very foundation of a prosecution case and may, in certain circumstances, frustrate the administration of justice altogether. Support is drawn from the case of Syed *Qamber Ali Shah v. Province of Sindh and others* (2024 SCMR 1123). Likewise, the Apex Court in *Suo Motu Case No. 19 of 2011* (2012 SCMR 437) reiterated that the investigating agency is duty-bound to conduct inquiries with diligence, objectivity, and unwavering commitment. These judicial pronouncements collectively reaffirm that an investigation must be honest, impartial, and in strict conformity with law, for it forms the substance upon which the entire criminal process rests.

10. The law further envisages that the Investigating Officer's mandate is kept to the collection of evidence and its proper placement before the competent Court. His role is investigative, not adjudicatory. The Investigating Officer is not permitted to draw legal conclusions, pre-judge the matter, or assume any authority beyond that which the statute confers. Any expertise attributed to an Investigating Officer is limited strictly to his operational domain namely, the systematic gathering, preservation, and presentation of material evidence relevant to the alleged commission of an offence. The Honourable Supreme Court, in *Muhammad Ahmad (Mahmood Ahmad) and another v. The State* (2010 SCMR 660), reaffirmed this principle, whereas the assessment of legal guilt or innocence squarely falls within the exclusive domain of the Court. Thus, the Investigating Officer must remain within the lines of statutory authority, ensuring that the evidence is collected lawfully, honestly, and impartially, leaving all judicial determinations to the forum competent under law.

11. However, the findings recorded by the Investigating Officer, being essentially *ipsi dixit* in nature, do not bind the Court in any manner. The law is well settled that a Court of competent jurisdiction is required to form its own independent opinion on the basis of the material available on record, and not to blindly rely upon the conclusions drawn by the police authorities. The investigation, no matter how detailed, cannot curtail the judicial prerogative of the Court to determine whether an offence is made out and whether the accused is to be charged for a particular crime. The Honourable Supreme Court in *Raja Khurshid Ahmed v. Muhammad Bilal and others* (2014 SCMR 474) categorically held that the conclusions of the investigating agency carry no binding force upon the Court, which must exercise its own judicial mind without being influenced by the subjective assertions of the Investigating Officer. Likewise, in *Nazir Ahmed and another v. The State and others* (PLD 2014 SC 241), the Apex Court reiterated that the police opinion is merely advisory and cannot override or control the judicial determination of facts or the framing of charges. The Court emphasized that it is the duty of the judiciary to sift the material for

itself, evaluate the evidence independently, and reach a conclusion in accordance with law, uninfluenced by any one-sided viewpoint emanating from the investigating machinery.

12. As per the settled practice of criminal jurisprudence, the classification of criminal cases into various categories traces its origins to the colonial-era *Bombay Presidency Police Rules*. This scheme was subsequently incorporated into the **Bombay Police Manual, Part-III**, wherein **Rule 219** delineated the well-known classifications of **A, B, and C classes**. Although these provisions were originally framed during the British period, the same practice continues to be consistently followed by the police authorities in Pakistan. These classifications are invoked at the stage of submitting the final report under Section 173, Cr.P.C, whereby the Investigating Officer recommends disposal of the case under the appropriate class. However, such recommendations are not conclusive in nature. They are always subject to judicial scrutiny by the concerned Magistrate or trial Court, which is obligated to apply its independent judicial mind before accepting, modifying, or rejecting the proposed classification. The Court is therefore not bound by the subjective opinion of the police and is required to determine, on the basis of material available on record, whether the case warrants being categorized under any of the said classes. For further clarification the classes are defined as under:-

A-Class: This category applies to cases where the allegations are found to be substantively true, but the accused remain untraced or unidentified. The investigation report in such matters reflects that, despite diligent and sincere efforts by the Investigating Officer, the culprits could not be apprehended. In these circumstances, the FIR is kept pending, and the investigation may be resumed or continued if any fresh or credible information comes to light in the future.

B-Class: This classification is reserved for maliciously false or frivolous complaints. Where, after proper investigation, it becomes evident that the FIR was lodged knowingly with false information or with an intent to harass the accused, the case is disposed of under B-Class. Disposal under this category may also attract legal consequences for the complainant under Section 182 of the Pakistan Penal Code,

which penalizes furnishing false information to public servants.

C-Class: This category covers those cases which are neither established as true nor proved to be maliciously false. It includes situations where there is insufficient evidence to proceed, where the matter falls under non-cognizable offences, or where the facts appear to be primarily civil in nature.

13. In this regard, this Court, in the case of **Syeda Afshan versus Syed Farukh Ali and others (PLD 2013 Sindh 423)**, observed that:

5. There is no procedural law in our country in which a Magistrate can grant administrative approval for disposal of a case under "A", "B" or "C" class, but the Magistrate has disposed of the case under "C" class by passing impugned order, therefore, it is to be clarified that these classes are in practice to dispose of the criminal cases after completion of investigation since long, this continuous practice has become usage and is not in consistent with or in derogation of fundamental rights as prescribed by Article 8 of the Constitution, therefore, such usage has force of law and now such practice is a part and parcel of the procedural law. Actually these classes were prescribed by Bombay Presidency Police Guide. According to Bombay Presidency Police Guide, report of investigation under section 173 of the Code of Criminal Procedure, 1898, is to be filed either in the form of a charge-sheet, if the accused is sent for trial, or in the form of a Final Report, in other cases. Final Reports are classified into 'A'--true cases, maliciously false cases, neither true nor maliciously false cases but non-cognizable.

As per practice/usage the class "A", "B" and "C" are defined as under:--

CLASS 'A':

F.I.R. is true, but accused is/are untraced, therefore, Magistrate can dispose of the case till the appearance/arrest of the accused.

CLASS 'B':

The F.I.R. is maliciously false and after passing summary orders by directing the S.H.O. to initiate proceedings for offence punishable under section 182, P.P.C. against the complainant/person, who gives information, which he knows or believes to be false.

CLASS 'C':

F.I.R. can be disposed of being non-cognizable offence, but in this class it is suffice to say that if there is evidence regarding non-cognizable offence, the Magistrate can direct the S.H.O. to submit a separate report under section 155, Cr.P.C. for taking cognizance and proceedings or otherwise.

14. Moreover, as per **Rule 24.4 of the Police Rules, 1934**, if the information received during investigation gives rise to doubt regarding the commission of an offence, the law prescribes a specific procedure to record such findings and to endorse that no offence has been committed. For ready reference, Rule 24.4 (I) of the Police Rules, 1934 reads as under:

24.4. Action when reports are doubtful.--(1) If the information or other intelligence relating to the alleged commission of a cognizable offence is such that an officer in charge of a police station has reason to suspect that the alleged offence has not been committed, he shall enter the substance of the information or intelligence in the station diary and shall record his reasons for suspecting that the alleged offence has not been committed and shall also notify to the informant, if any, the fact that he will not investigate the case or cause it to be investigated.

15. So far as the cancellation of a case is concerned, the same powers are also prescribed and defined in the relevant provisions of the Police Rules. The mechanism for cancellation or disposal of a case is specifically provided under **Rule 24.7 of the Police Rules, 1934**. For ready reference, the said Rule is reproduced as under:

24.7. Cancellation of cases.-- Unless the investigation of a case is transferred to another Police Station or district, or first information report can be cancelled without the orders of a Magistrate of the 1st class. When information or other intelligence is recorded under section 154, Criminal Procedure Code, and, after investigation, is found to be maliciously false or false owing to mistake of law or fact or to be non-cognizable or matter for a civil suit, the Superintendent shall send the first information report and any other papers on record in the case with the final report to a Magistrate having jurisdiction and being a Magistrate of the first class, for orders of cancellation. On receipt of such an order the officer in charge of the police station shall cancel the first information report by drawing a red line across the page, noting the name of the Magistrate canceling the case with number and date of order. He shall then return the original order to the Superintendent's office to be filed with the record of the case.

16. Now, adverting to the aspect of cases registered against unknown or untraced persons, it is significant to note that the Police Rules, 1934,

provide a complete process to regulate such situations. The law does not permit the absolute rejection of such cases without due inquiry or investigation; rather, specific provisions have been framed to ensure that even when the offenders remain untraced, the case file remains alive for future action. For the sake of clarity, the relevant rules of Police Rules 1934, are reproduced and explained as under:

Rule 21.35 (h) To co-ordinate and guide the efforts of police station staff throughout the district in securing the arrest of absconders and proclaimed offenders and in locating absentee bad characters, criminal tribesmen and other untraced persons and to maintain close co-operations with the C.I.As. of other districts in this work.

27-39. Monthly sorting. - (1) At the end of each month, or sooner if convenient, the cases in the upper row which are no longer pending investigation shall be sorted and divided into separate packets as follows:-

(a) All traced cases and untraced bailable cases, including cancelled cases.

(b) Untraced non-bailable cases, in which action under section 512, Code of Criminal Procedure, has not been taken.

(c) Untraced bailable and non-bailable cases in which action under section 512, Code of Criminal Procedure, has been taken.

17. The prime duty of the Magistrate in this regard is well settled in law. It is now firmly established that a Magistrate is not bound by the report submitted by the police under Section 173, Cr.P.C, and may either accept or reject the conclusions reached by the Investigating Officer. Section 190, Cr.P.C., does not contain any provision preventing a Magistrate from taking cognizance of a case under clause (b) of the same section, even if the police report is not in favor of proceeding. The Magistrate is required by law to exercise independent judicial discretion, carefully considering the material placed before him, and formulating his own opinion on whether the case merits further proceedings. In support of this settled principle, reference may be made to the case of **Muhammad Shahid Khattak and another versus The State (PLD 2013 Sindh 220; Geo vs Ali Nawaz and another 2005 PCr.LJ 560; Farooq Sumar vs The state and another 2004 PCr.LJ 1023)**,

18. In the present case, the matter assumes significance in light of the aforementioned principles. The Magistrate observed that the dispute is essentially of a civil nature. At the time of submission of the challan, the Investigating Officer proceeded on the basis that the accused party had already taken possession of the articles in question, which were alleged to be due from the brother of the applicant/complainant. This indicates that the parties had, in effect, settled the matter among themselves or permitted another party to take the material in question. Consequently, the Magistrate invoked his jurisdiction, taking into account the civil character of the dispute and the fact that the police report reflected the resolution of the issue outside the criminal proceedings. It is a well-settled principle of law that a Magistrate can take cognizance of an offence even in the face of a negative report submitted by the police, indicating that the accusation is baseless or that no case is made out against the alleged delinquents. This principle finds support in the case of **Safdar Ali versus Zafar Iqbal and others (2002 SCMR 63)**. However, in the present case, the learned Magistrate failed to apply his independent judicial mind, which is not sustainable in law. The Magistrate opined that the matter was purely of a civil nature, whereas the opinion of the Investigating Officer did not support such a conclusion. The IO had reported that the accused party had taken possession of articles that were outstanding against the applicant, and that these articles were removed from his shop. Such an act cannot, by any reasonable standard, be classified as a civil dispute.

19. Further, the Magistrate relied on an alleged delay of two days in the lodging of the FIR to justify his decision. Delay, by itself, is not a ground for dismissing a case under the A, B, and C class system. If the Magistrate had intended to dispose of the matter under C class solely on the ground of delay, there would have been no necessity to proceed with a trial. It is also well established that a Magistrate deciding a police report under Section 173, Cr.P.C., is not to be presumed to act as a trial court, as the functions and powers of the two are fundamentally different. The criminal administration of justice is divided into two distinct and consistent stages, namely, investigation and trial. The first

stage, investigation, is entrusted to the Investigating Officer whose primary duty is to ascertain the truth underlying the allegations, collect evidence, and identify the persons responsible, thereby laying the foundation for subsequent legal proceedings. Investigation is essentially a information-gathering process aimed solely at fact-finding and does not determine the guilt or innocence of the accused. The second stage, trial, constitutes the legal forum wherein a competent Court, adhering strictly to procedural and substantive law, adjudicates upon the guilt or innocence of the accused persons. The trial is judicial in nature and involves the impartial assessment of evidence, hearing of the parties, and application of relevant law. It is well-settled that proceedings conducted before a Magistrate during the course of investigation cannot and shall not prejudice the authority or jurisdiction of the trial Court. The latter retains the absolute and independent mandate to evaluate the evidence adduced before it and to determine, without any bias or prejudice, the question of the accused's guilt or innocence. Reliance is drawn from the decision in **Muhammad Shoaib v. The State through Prosecutor General Sindh (2022 PCr.LJ 1564)**.

20. Now coming to the point of entertaining the matter by this Court under its inherent powers, it is settled that when a Magistrate concurs with a police report submitted under Section 173, Cr.P.C, he does not act as a criminal court inferior to the Court of Session or the High Court. Therefore, his order cannot be revised or modified under the provisions of Sections 435 and 439, Cr.P.C. However, such an order is amenable to the inherent jurisdiction of the High Court under Section 561-A, Cr.P.C. This principle finds support from the judgments in **Arif Ali Khan v. State 1993 SCMR 187, Muhammad Sharif v. State 1997 SCMR 304, and Hussain Ahmed v. Irshad Bibi 1997 SCMR 1503**.

21. In view of the above, this Criminal Miscellaneous Application is hereby allowed. The impugned order dated 10.02.2024, passed by the learned Judicial Magistrate XXV, Karachi South, whereby the 'C'-class report of the Investigating Officer was accepted, is set aside. The learned Magistrate is directed to process the final report already submitted by the Investigating Officer in accordance with law.

JUDGE

Amjad PS